UNITED
NATIONS

AT

Administrative Tribunal

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ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 583

Case No. 622: DJIMBAYE

Against: The Secretary-General
of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Samar Sen, Vice-President, presiding; Mr. Ioan Voicu; Mr. Mikuin Leliel Balanda;

Whereas at the request of Nestor Nadjidoumdé Djimbaye, a former staff member of the United Nations, the President of the Tribunal, with the agreement of the Respondent, extended to 30 September 1988, the time-limit for the filing of an application to the Tribunal;

Whereas, on 12 December 1989, the Tribunal suspended, under article 7, paragraph 5 of its Statute, the time-limit for the filing of an application until 30 April 1990;

Whereas at the request of the Applicant and with the agreement of the Respondent, the President of the Tribunal extended to 31 July, 31 October 1990, 31 January and 31 March 1991, respectively, the time-limit for the filing of an application;

Whereas at the request of the Applicant, the Tribunal suspended, under article 7, paragraph 5 of its Statute, the time-limit for the filing of an application until 30 September 1991;

Whereas, on 30 September 1991, the Applicant filed an application containing the following pleas:

"II. PLEAS

8. With regard to its competence and to procedure, the Applicant respectfully requests the Tribunal:

(a) To find that it is competent to hear and pass judgement upon the present application under article 2 of its Statute;

(b) To find that the present application is receivable under article 7 of its Statute.

9. On the merits, the Applicant respectfully requests the Tribunal:

(a) To find that the decision to dismiss the Applicant was based on errors of facts;

(b) To find that there were procedural irregularities which vitiated the decision to dismiss the Applicant;

(c) To find that the decision to dismiss the Applicant was arbitrary;

(d) To find that there was abuse of discretionary power;

(e) To order the Respondent to rescind his decision to dismiss the Applicant in line with article 9 of its Statute, and further,

(f) To order the appropriate amount of compensation [to] be paid to the Applicant for the injury sustained by him by the lack of due process and excessive delays;

(g) To order that appropriate termination indemnity be awarded Applicant."

Whereas the Respondent filed his answer on 16 January 1992;

Whereas the Applicant filed written observations on 10 February 1992;

Whereas, on 20 October 1992, the Applicant submited an additional statement;

Whereas the facts in the case are as follows:

The Applicant entered the service of the United Nations on 26 June 1977. He served as an Associate Social Affairs officer, at the Social

Development Division of the Economic Commission for Africa (ECA), in Addis Ababa, on a probationary appointment. On 1 June 1979, his appointment was converted to a permanent appointment and on 1 April 1980, he was promoted to the P-3 level. On 3 January 1986, the Applicant was dismissed for misconduct.

The Applicant, being an international recruit, was entitled to an education grant in respect of each child in full-time attendance at a school, university or similar educational institution. Education grant payments are calculated on the basis of certificates of attendance and fees, bearing the seal of the school and signed by one of its representatives and indicating the dates of the child's attendance and the amounts actually paid to the institution. These, in turn, are certified by the staff member, as being true to the best of his or her knowledge and belief, on the "Request for settlement form". Education grants are paid on the basis of this double certification.

In August 1981, the Applicant submitted claim forms to justify advances paid to him by the Organization for education grant benefits for the 1980-81 school year for three of his children (Kaltouma Alphonsine, Philomene and Marie-Louise) who were allegedly studying in Cameroon. In support of his claim, he submitted certificates of attendance and stamped receipts from the Ecole Primaire Catholique Nkol-Ewé and from the Ecole Notre-Dame de Mimetala, located in Yaoundé, Cameroon for a total of CFA 1,334,000 (approximately US$4,500).

On 23 October 1981, the Director of Administration and Conference Services wrote to Applicant questioning the accuracy of the claims and the supporting documentation he had submitted.

In a reply dated 27 October 1981, the Applicant admitted that he had spent the sums claimed and further stated that those expenditures did not appear to "respect" the principles of the education grant scheme. He would, accordingly, reimburse the amount of the advance. A repayment schedule was arranged by the Administration and explained to the Applicant in a memorandum dated 6 November 1991, from the Director, Division of Administration and Conference Services.

On 26 November 1981, the Applicant explained that he had used the grant advance properly, as it had been used for education, although not as claimed.

In response to an enquiry of the Administration dated 17 February 1982, officials from the schools which the Applicant's children had allegedly attended, certified that the Applicant's children had not been enrolled in the schools during the school year 1980-1981, that their fee scales were not as claimed by the Applicant and that the receipts submitted by the Applicant were false.

On 25 May 1982, the Chief of Personnel asked the Applicant for his comments. In a reply dated 28 May 1982, the Applicant referred the Chief of Personnel to his prior communication to the Director, Division of Administration and Conference Services. He also stated that he had paid for the education costs of his children residing in Europe.

On 18 June 1982, the Chief of Personnel wrote to the Applicant asking him to confirm that his children did not attend the Yaounde schools for which he had claimed an education grant. In a reply dated 23 June 1982, the Applicant asserted that the receipts had been given to him by the school and that the evidence assembled by ECA was not "conclusive" evidence that his children did not attend the school.

On 30 June 1982, the Chief, Personnel Section informed the Applicant that he was "inclined to conclude that [the Applicant] knowingly defrauded the Organization by claiming and receiving sums to which [he] knew [he was] not entitled by presenting false documents. Accordingly, the Administration was proceeding to prepare a final report on the case which would be sent to him for comments under paragraph 3(d) and (e) of PD.1/76 [Disciplinary Procedure for Staff Serving at Offices away from Headquarters and Geneva]". In a letter dated 20 July 1982, the Applicant wrote to the Assistant Secretary-General for Personnel Services, explaining his version of the facts and his interpretation of the education grant advances.

On 7 November 1983, the Chief, Personnel Section informed the Applicant that the Executive Secretary had decided to appoint an ad hoc Disciplinary Committee to investigate the allegations of fraud in connection with the education grant claims he had made for the 1980-81 school year. He also advised him of the specific charges and provided him with a copy of PD/1/76.

After conducting its investigation, the ad hoc Committee adopted a report in which it concluded and recommended as follows:

"28. After carefully examining all the material before it, the Committee made the following findings and conclusions:

a) It was established beyond doubt that Mr. Djimbaye's three children, namely, Khaltouma Alphonsine, Marie-Louise and Philomene were not enrolled and did not attend the said schools in Cameroon during the school year 1980-1981. In fact they were not in Cameroon at all during that period. Mr. Djimbaye himself admitted this fact in both his written and oral evidence (...). Therefore, the Committee concludes that by submitting a claim relating to such schools, Mr. Djimbaye committed a breach of the rules, regulations and procedures governing education grant.

b) The school attendance certificates and the receipts which had been presented by Mr. Djimbaye to support his claim for education grant for 1980-1981 for the said three children had been signed by someone else (believed to be the former Director of the school) who was not authorized to do so. His argument that he was not aware of the change (...) is not acceptable to the Committee because it is our view that [an individual] who was at that time working in the Ministry of Works of the Government of Cameroon and who acted on his behalf, was in fact in a position to know [sic] verify the authenticity of the school management before obtaining their signatures on the documents.

c) Mr. Djimbaye appears in fact to have colluded with [that individual] who in turn appears to have colluded with someone else (believed to be the former director of the school) in order to obtain unauthorized signatures to support his claim. He was also fully aware of this fact. The Committee could not therefore accept his explanation that he was forced by the Personnel Section [the Chief, Personnel Services] and [a staff member of OPS] (...) to submit certificates and receipts from the school where it was known the children never attended during the school year 1980-1981.

d) Mr. Djimbaye had received an advance of US$4,500 against the education grant for 1980-1981 which was far in excess of the total actual school fees normally charged by the schools in Paris (for Khaltouma Alphonsine) and in Addis Ababa (for Marie-Louise and Philomene). It is the view of the Committee that he therefore wilfully attempted to absorb or cover this advance by submitting an education grant claim which was supported by (i) attendance certificates which were signed by an unauthorized person who was in any case not an official of the school; (ii) receipts that were not of the school claimed by Mr. Djimbaye but were signed by the same person; and (iii) by stamps which were not the official stamps of the school. In fact, it is the opinion of the Committee that the three receipts appear to be written by the same person although relating to two different schools. To the extent that this was so, there was an attempt to defraud the Organization.

e) The fees claimed by Mr. Djimbaye for that year were, from the evidence gathered, definitely much higher than was actually the case in Cameroon. However, the Committee is of the opinion that since the children were not in Cameroon during the school year in question, the amount of the fees claimed by Mr. Djimbaye bears no material fact [sic] to this case. The deciding factor being that such claim was at all made for schools not attended by the children and that the amounts claimed by him were much higher than what he had actually paid for the education of his three children in the school year 1980-1981 for the school in Paris (Khaltouma Alphonsine) and in Addis Ababa (for Marie-Louise and Philomene).

29. In the light of the above facts the Committee does not accept Mr. Djimbaye's explanations or counter-charges against [the Chief, Personnel Services] and [a staff member of OPS] as constituting mitigating circumstances that forced the staff member to submit falsified receipts and certificates of attendance to support his education grant claim. Accordingly, the Committee upholds the charges made against the staff member by the Division of Administration and recommends that appropriate disciplinary action be taken against him."

On 14 August 1984, the Chief, Personnel Section, based on the ad hoc Committee's report and the Applicant's observations thereon, recommended to the Executive Secretary that the Applicant be dismissed for misconduct. On 23 August 1984, the Executive Secretary endorsed this recommendation.

On 6 November 1985, the Under-Secretary-General for Administration and Management, after review of the material transmitted to Headquarters by ECA on 31 August 1984, recommended to the Secretary-General that the Applicant be dismissed for misconduct, as a disciplinary measure, according to staff rule 110.3(b).

On 11 December 1985, the Assistant Secretary-General for Personnel Services informed the Applicant that the Secretary-General had decided to dismiss him, for misconduct, as of the date of receipt of this communication, as a disciplinary measure, under staff rule 110.3(b).

On 24 January 1986, the Applicant lodged an appeal with the Joint Appeals Board (JAB). On 23 May 1988, the Board adopted its report. Its conclusions and recommendation read as follows:

"Conclusions and Recommendation

57. The Panel unanimously

1. Finds that the administrative decision of the Secretary-General to dismiss the appellant for misconduct for submitting fraudulent education grant claims was justified on the basis of the available conclusive evidence.

2. Finds that the appellant's procedural rights to due process had been duly observed and that every effort was made to ensure his rights of defense in giving him the opportunity to avail himself of the assistance of counsel under Personnel Directive PD/1/76 of 1 January 1976 and establishing and ad hoc Disciplinary Committee to investigate the charges, and

3. Finds that the appellant has not produced any convincing evidence that the procedure against him and the Secretary-General's decision had been tainted by prejudice or improper motivation.

58. Therefore, the Panel unanimously decides to make no recommendation in support of the appeal.

Special Remarks

59. The Panel regrets that excessive delays had slowed down the whole procedure contrary to the interests of the appellant and of the Organization e.g. more than one year between the communication, of 30 June 1982, from the Chief of Personnel Section, ECA, and the first meeting of the ad hoc Disciplinary Committee (15 November 1983), more than six months between the date when the Executive Secretary, ECA, received the report of the ad hoc Disciplinary Committee (15 December 1983) and the date when his recommendation and other documents were sent to Headquarters (31 August 1984) and more than one year between that action and the letter of the Assistant Secretary-General for Personnel Services transmitting the decision to dismiss the appellant (11 December 1985)."

On 31 May 1988, the Under-Secretary-General for Administration and Management transmitted to the Applicant a copy of the JAB report and informed him that the Secretary-General, having reviewed his case in the light of the JAB report, had decided to maintain the decision to dismiss him for misconduct consisting of submitting fraudulent education grant claims.

On 30 September 1991, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The Respondent's decision to dismiss the Applicant was tainted by prejudice and based on mistakes of fact and errors of law.

2. The failure by ECA to follow correct procedures deprived the Applicant of his right to due process of law.

3. The ad hoc Committee which investigated the Applicant's case did not properly take account of his explanations of the facts.

Whereas the Respondent's principal contentions are:

1. The UN Charter and the Staff Regulations oblige the Secretary-General to select and retain staff of the highest standard of integrity. Therefore, he has the responsibility of determining definitively whether a staff member meets those standards.

2. The decision to dismiss the Applicant was properly reached after a procedure which afforded due process and safeguarded Applicant's rights.

The Tribunal, having deliberated from 29 October to 20 November 1992, now pronounced the following judgement:

I. The basic question in this case is whether the Applicant deliberately and falsely claimed education grants in respect of three of his children in order to obtain a financial benefit and so defraud ECA where he was working. The Applicant asked for the payment of education grants much in excess of legitimate charges of the two schools at Yaoundé (Cameroon) where the three children were supposed to have studied in the school year 1980-1981, but they did not in fact attend any schools in Yaoundé in that year. The Applicant's claims were considered by the Respondent as based on false and fabricated certificates of attendance and receipts.

II. The Applicant did not entirely deny that he had made wrong claims supported by false documents, but offered a variety of explanations why he did so. He expressed his willingness to pay back whatever was considered inadmissible and proceeded to make claims regarding other sums owing to him by ECA; these are however not before the Tribunal. A study of the file shows that the attitude of the Applicant was much influenced by what he considered to be due to him.

III. In his numerous explanations, the Applicant referred to the political situation in Chad (his home country) and in Ethiopia where he was working, which compelled him, from time to time, to change the schooling pattern of his children. The voluminous details he provided do not give the Tribunal a clear picture of what happened at different stages, even if the lack of clarity could be considered, to some extent, as due to the passage of time.

IV. In any event, all these developments, and the administrative and legal questions connected with them, were carefully examined, not only by the Respondent, but by the ad hoc Joint Disciplinary Committee (JDC) and by the

Joint Appeals Board (JAB). They all came to the same conclusion, i.e. that the Applicant was guilty of misconduct and thus liable to disciplinary measures, as may be determined by the Secretary-General. The Secretary-General decided to separate the Applicant from service, with effect from 3 January 1986.

V. The Applicant pleads that the findings of the Respondent, as well as of the JDC and of the JAB, were vitiated by an erroneous assessment of the facts, by a series of procedural irregularities which had the effect of denying the Applicant the protection of the Staff Regulations and Rules and by prejudice or malice on the part of some of his colleagues in ECA. Finally, he contends that, in any event, his punishment is harsh and disproportionate to any offence of which he might be guilty.

VI. Before examining these pleas, the Tribunal would wish to restate that, in disciplinary matters the Secretary-General has a broad power of discretion. Its exercise can only be questioned if due process has not been followed or if it is tainted by prejudice or bias or other extraneous factors. The Tribunal finds, in this instance, no convincing evidence or arguments to sustain any charge of bias or prejudice. A close scrutiny of the allegations made by the Applicant himself in his letter of 20 July 1982, to the Assistant Secretary-General for Personnel Services, demonstrates that the Respondent was not influenced by any bias or prejudice or other extraneous factors. The Respondent carefully considered the various charges on at least three occasions. Taking into account all the factors, the Respondent came to the conclusion that the Applicant's conduct was unsatisfactory and imposed separation from service as a disciplinary measure.

VII. As regards the composition of and the procedure followed by the Joint Disciplinary Committee, the Applicant's contention that all the members were the Respondent's nominees, has already been commented upon by the JAB which noted that, under the regulations, such a composition was valid. The Tribunal finds from the material available in the files, that several other JDCs are, in fact, so constituted, even though the Chairman of the ECA Staff Council,

states in a letter of 20 October 1987 - long after the JDC had dealt with the present case - that "The staff representatives have always regretted the ECA administration's tendency to unilaterally establish investigating panels without prior consultation". In the same letter, it is stated that "The three members (of the JDC) were all senior to [the Applicant], they were P-5 or L-5 ... and were in a position to look for favourable personnel treatment." In the circumstances, the Tribunal holds that the composition of the JDC was not detrimental to the Applicant's interests and that it was consistent with the prevailing rules.

IX. Apart from his challenge to the composition of the JDC, the Applicant suggests that in several respects, the procedure followed by the JDC "failed to abide by requirements of due process throughout its investigation" and did not put a date on its report. The Tribunal regrets that the report is undated, but cannot find any instance in the procedure followed by the JDC where the Applicant's basic rights or the broad considerations of due process were in any way infringed.

X. As regards the JAB, the Applicant mentions that, contrary to what the JAB stated in its report, the JDC did not "undertake additional enquiries". The Tribunal finds this to be of minor significance and a matter of interpretation. The fact is that both the JAB and the JDC had examined all the major issues with care, and came to nearly identical conclusions. The Applicant complains that some of the documents were not shown to him, or not shown to him in time. This is contradicted by the Respondent. Irrespective of this dispute, the Tribunal considers that all the relevant and significant issues were thoroughly discussed by the JDC and the JAB, with the knowledge and assistance of both parties.

XI. The Applicant's grievance about the Respondent's handling of the case has many aspects. He not only complains about several documents not being shown to him, but that the Respondent was prejudiced against the Applicant and that some basic tenets of due process were not observed. The Tribunal has already indicated that it found no evidence of prejudice. As regards the plea

that due process was not followed, the Tribunal finds, that apart from the conflicting statements on whether the ECA Executive Secretary's memorandum to Headquarters was shown to the Applicant or not, all the other matters raised are not of much significance, e.g. the failure of the head of the office or mission "to inform Headquarters by cable".

XII. The Tribunal concludes that despite many minor irregularities and a regrettable major delay (aptly commented upon by the JAB), the Applicant's rights were by and large protected and that his separation was carefully considered before it was given effect by the Respondent. The Applicant apparently felt that much was due to him from ECA and that his willingness to pay back whatever he had received by his false claim regarding his children's education in Yaoundé, should close the case. The Tribunal cannot accept such a contention, nor is it able to see how an attempt to defraud can be exonerated by what the Applicant implies when he says: "It is not contrary to regulations in force to point out that the education grant advances were sought for one set of schools, but that other arrangements were forced on the Applicant for political and family reasons."

XIII. Finally, on the issue of whether the punishment is proportionate to the offence, the Tribunal takes the view that this is entirely a matter within the discretion of the Secretary-General. Each instance of disciplinary action has to be treated separately; what can be a just and adequate deterrent in one set of conditions may prove quite insufficient in other circumstances. Not only general considerations of sound administration, but the relative responsibility of the staff member concerned and all other relevant factors are to be assessed before the Secretary-General exercises his discretion.

XIV. The Tribunal finds that in the present case, the Respondent has exercised his discretion properly, that due process was substantially accorded to the Applicant and that there is no evidence of prejudice or other extraneous factors. Such delays and such deficiencies in procedure, as occurred in this case, did not, in the view of the Tribunal, inflict any significant injury on the Applicant or deflect the course of justice.

XV. For the foregoing reasons, the application is rejected.

(Signatures)

Samar SEN
Vice-President, presiding

Ioan VOICU
Member

Mikuin Leliel BALANDA
Member

New York, 20 November 1992

R. Maria VICIEN-MILBURN
Executive Secretary